

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter)

Implementation of Section 19 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

Annual Assessment of the)
Status of Competition in the)
Market for the Delivery of)
Video Programming)

CS Docket No. 94-48

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF NETLINK USA

Netlink USA ("Netlink") hereby submits these reply comments in response to the comments filed in this proceeding by four distributors operating in the C-band Home Satellite Dish ("HSD") market. These commenters have alleged anticompetitive practices -- specifically discrimination on the part of certain programmers, including Netlink -- notwithstanding prior Commission findings and the Commission's new program access rules that permit pricing differentials.¹

With the passage of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Congress provided that satellite cable and

¹See generally *First Report and Order in Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, ("Report and Order"), 8 F.C.C. Rcd. 3359 (1993) recon. pending; 47 C.F.R. § 76.1002.

satellite broadcast programming vendors were required to make programming services available to all multichannel video programming distributors ("MVPDs") on non-discriminatory terms and conditions. However, this legislation, as well as the Commission's implementing regulations, recognized the differences in the manner in which programming services are provided to different types of MVPDs. Indeed, the Commission found that delivering programming services to the HSD market is more costly than providing service to cable and other facilities-based operators and, as a consequence, rate differentials would be consistent with both the legislation and the Commission's implementing regulations.² Netlink, as a satellite broadcast programming vendor,³ utilizes price differentials reflecting the increased costs of serving the HSD market.

Nonetheless, certain HSD distributors continue to complain, as they have for the past six years, that programming vendors such as Netlink unfairly discriminate against them in the sale of programming to the HSD market.⁴ What these distributors fail to

²*Report and Order*, at ¶ 106.

³47 C.F.R. § 76.1000(g). Netlink uplinks and distributes the "Denver 5" service consisting of KUSA-TV (ABC), KCNC-TV (NBC), KMGH-TV (CBS), KRMA-TV (PBS), and KWGN (IND). Netlink also uplinks and distributes the Fox affiliate in Denver, KDVR-TV, and recently began uplinking and distributing the "Atlantic 3" service, consisting of WPLG-TV (ABC), WUSA-TV (CBS), and WBZ-TV (NBC).

⁴*See, e.g.*, Comments of the National Rural Telecommunications Cooperative ("NRTC") at 17; Joint Comments of Consumer Satellite Systems, Inc., Programmers' Clearinghouse, and Satellite Receivers, Ltd. (the "Three Packagers"), at 3-5. These four HSD distributors (out of more than 30 regional and national HSD program packagers) uniformly request the "cable rate" although service delivered to cable operators is functionally different. Moreover, these HSD distributors have no facilities for receiving and redistributing *any* programming service, and thus could not even utilize the service provided to cable operators.

acknowledge is that the satellite broadcast programming market is perhaps the most competitive of all programming markets. Superstation and network station carriers such as Netlink face unique competitive pressures and artificial ceilings on the prices they can charge distributors.⁵ Indeed, the explosive growth in the programming market generally, and in HSD subscribership specifically, undercuts any notion that superstation or network station programmers are discriminating. Notwithstanding the unique competitive pressures and the extensive development of the HSD market, as confirmed by the comments and attachments submitted by the Satellite Broadcast Communications Association ("SBCA"),⁶ NRTC and the "three packagers" complain that their profit margins are too low.

While the Commission solicited comments from all interested parties for the purpose of assessing the state of competition in the relevant markets, reality must take precedence over hyperbole. There are twenty network stations and superstations available by satellite to all MVPDs in the HSD market, and sixty more satellite programming services that are available to home dish owners from more than 40 programmers, regional and national packagers, and distributors of programming. Becoming an HSD distributor requires minimal investment, and anyone willing to invest in the necessary facilities to

⁵*Report and Order*, at ¶ 100.

⁶ "An analysis of the data . . . presented in the comments [of the SBCA], together with the information in the Appendices . . . indicates an increasingly competitive trend on the part of the DTH satellite industry." SBCA Comments at 20. The SBCA included detailed information from a publication known as its "SkyREPORTS" documenting the continued growth of the C-Band TVRO market, and healthy competition among the many distributors and programmers selling services to home dish owners.

receive, up-link and distribute superstation and network station signals can become a satellite broadcast programming vendor and compete with Netlink as well as the other programmers.

These undisputed facts make the HSD market one of the most competitive and robust in the country. Price competition is fierce as the programming vendors vie for subscribers by marketing through as many distributors as possible. Most of the distributors distinguish themselves on the basis of customer service and creative packaging. While a few distributors will always want lower programming prices, it is clear that the prices home dish owners pay for programming already are substantially lower than those paid by similarly situated cable subscribers.⁷ Accordingly, it is a rather hollow claim of discrimination where the Commission has recognized and condoned price differentials in a market that clearly operates with fierce competition. There is no motive to engage in price discrimination and unjustified price differentials simply could not survive.

The Commission's report to Congress should be comprehensive and note the growth and competitiveness of the HSD market. Moreover, the advent of the high-powered direct broadcast satellite ("DBS") services (DirecTV and USSB) in addition to the medium-powered DBS service (Primestar) have made the HSD market all the more competitive and

⁷Netlink provides its "One Stop" package consisting of 29 channels of popular satellite cable and satellite broadcast (network and superstation) programming for \$16.50 per month. The benchmark monthly cable rate for 24 regulated satellite channels on an MSO's 10,000 subscriber cable system, in an average income area, is 35% *higher* or \$22.32 per month, for fewer channels. FCC Form 1200, Module C.

provide significant competition to cable. The Commission's report should reflect these developments and take the isolated complaints of certain of the HSD distributors as nothing more than unjustified and strategic posturing for future complaints to gain lower rates.

Respectfully submitted,

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